IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 30717 of 2003(F)

{O.P.NO.376/02 ON THE FILE OF THE FAMILY COURT, THIRUVANANTHAPURAM}

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PETITIONERS:

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1. P.S. AMBIKA, D/O. SARASAMMA,
   SARASU BHAVAN, KESHAVAPURAM,
   NAGAROOR P.O., KILIMANOOR,
   THIRUVANANTHAPURAM DIST.

2. ASWATHY, D/O. SURENDRAN,
   SARASU BHAVAN, KESHAVAPURAM,
   NAGAROOR P.O., KILIMANOOR,
   THIRUVANANTHAPURAM DIST. (MINOR)

3. AKHIL, S/O. SURENDRAN,
   SARASU BHAVAN, KESHAVAPURAM,
   NAGAROOR P.O., KILIMANOOR,
   THIRUVANANTHAPURAM DIST. (MINOR)

BY ADV. SRI.BASANT BALAJI
SMT.K.KUSUMAM

RESPONDENTS:

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1. SURENDRAN ALIAS SURESH,
   S/O. MUTHUSWAMY ASARI, ASWATHY NIVAS,
   CHEMPUPARAMBU, VELALLOOR P.O.,
   KILIMANOOR,
   THIRUVANANTHAPURAM.

2. SUSEELA,
D/O. PONNAMMA,
PUTENVEEDU, NAGAROOR, VELLALLOOR P.O.,
THIRUVANANTHAPURAM.

3. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
TRIVANDRUM.

BY ADV. SRI.M.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORIGINAL PETITIONER NO.376/2002 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM FILED BY THE PETITIONERS.

EXT.P2: TRUE COPY OF THE INJUNCTION APPLICATION IA 508/02 FILED BY THE PETITIONERS IN Ext.P1 O.P.

EXT.P3: TRUE COPY OF THE ORDER IN IA 508/02 IN OP 376/02 OF THE FAMILY COURT, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

sk/-

K.A.ABDUL GAFOOR, J.

W.P.(C).No.30717 of 2003 F

Dated this the 24th day of January, 2007.

JUDGMENT

Abdul Gafoor, J.

In a suit between an estranged wife and children on the one part and the husband on the other, the petitioners instituted a suit for maintenance as well as seeking an injunction and declaration that a document executed by the husband/1st respondent in favour of his sister/2nd respondent was void.

2. According to the first petitioner, the said property was purchased by her husband/1st respondent, utilising the sale consideration in respect of her property which was sold to a stranger and also the money obtained on selling off her gold ornaments. After the relationship has been strained, her husband ejected her out and thereafter created a document transferring the title to the property in

favour of his sister/2nd respondent. Immediately thereafter, the suit was filed.

3. In the suit, the petitioners sought for restraining the 2nd respondent from further alienating the property. Though an ad interim injunction was granted, on appearance of the contesting respondents and after hearing them, the interim injunction was vacated. Ext.P3 is the order passed by the Family Court vacating the ad interim order of injunction. It is challenged in this writ petition.

4. The self-same contentions urged before the Family Court are again reiterated before me. It is further submitted that the 2nd respondent is only a name lender to defeat the rights of the petitioners. In case, the 2nd respondent further alienates the property, the petitioners have to follow them and implead them to get an effective relief. Therefore, it was necessary, in the interest of justice,

to grant an order of injunction and the Family Court went wrong in vacating the interim injunction.

5. It is submitted on behalf of the 2nd respondent that the 1st respondent had incurred liability concerning the property by mortgaging it in a bank to obtain loan for construction of the house now put up therein. The loan could not be repaid. This resulted in threat of recovery proceedings. It was at that stage, as nobody else was there to purchase the encumbered property, the 2nd respondent came to save her brother and purchased the property. In such circumstances, she being a bona fide purchaser, cannot be injuncted from dealing with the property, in the manner in which she desires.

6. Certainly, the petitioners are the wife and children of the first respondent. But, so far as the 2nd respondent is concerned, she is a bona fide purchaser. She

had not been put to notice as to the claim, if any, of the petitioners over the said property. Whether the 2nd respondent did have knowledge that the petitioners had a claim over the property is not a matter of enquiry while granting interim injunction. Merely because the petitioners are the wife and children of the first respondent, who is attempting to defeat their interest, an interim injunction cannot be granted in respect of the said property. The remedy is to seek maintenance. It is submitted that actually an order in that regard has been passed. If the maintenance ordered is not sufficient to meet both the ends, they are free to seek for revision of the maintenance before the Family Court. On any count, Ext.P3 order passed by the Family Court cannot be said to be so unjust and unconscionable to invite interference in the writ petition. Writ petition fails, dismissed.

But taking into account the pendency of the case before the Family Court and considering the nature of the case set up by the petitioners/plaintiffs, the wife and children, it is only appropriate that the suit be tried and disposed of at the earliest, at any rate, within three months from the date of receipt of a copy of this judgment.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR , J.

W.P.(C).No.30717 of 2003 F

JUDGMENT

24th January, 2007.